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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

John Calvin Neuendorf, II,
Plaintiff,

vs.

Bette Jan Steinhilber, et al.,
Defendant.

No. CV 10-724-PHX-RCB (DKD)

ORDER

Pending in this closed case are Plaintiff’s “Motion to the Court” (Doc. 8) and lodged Second Amended Complaint (Doc. 9). The Court will deny Plaintiff’s Motion and direct the Clerk of Court not to file Plaintiff’s lodged Second Amended Complaint.

I. Procedural Background

On March 31, 2010, Plaintiff John Calvin Neuendorf, II, who is confined in the Maricopa County Fourth Avenue Jail, filed a *pro se* civil rights Complaint (Doc. 1) and an Application to Proceed *In Forma Pauperis* (Doc. 3). By Order filed May 5, 2010 (Doc. 5), the Court granted Plaintiff’s Application to Proceed *In Forma Pauperis*, assessed a partial filing fee of \$1.53, and dismissed the Complaint for lack of subject matter jurisdiction. Plaintiff was given 30 days from the filing date of the Order to file a first amended complaint in compliance with the Order. The Clerk of Court was directed to enter a judgment of dismissal of this action without prejudice and without further notice to Plaintiff if he failed to file a first amended complaint within 30 days.

1 When Plaintiff failed to comply with the Court’s May 5, 2010 Order (Doc. 5), the
2 Clerk of Court entered a Judgment of dismissal of this action on June 21, 2010 (Doc. 7).

3 **II. Motion to the Court**

4 On July 8, 2010, Plaintiff filed a “Motion to the Court” (Doc. 8), in which he asks for
5 “extensions & or the re[opening and new directives” for this and two other cases.¹ In the
6 present case, where Plaintiff submitted his Motion after entry of judgment, the only
7 appropriate procedural devices are: (1) a motion to alter or amend judgment pursuant to Rule
8 59(e), Federal Rules of Civil Procedure; or (2) a motion for relief from judgment pursuant
9 to Rule 60(b), Federal Rules of Civil Procedure. Here, Plaintiff served his Motion within the
10 28 days required by Rule 59(e). Accordingly, the Court will construe Plaintiff’s Motion as
11 having been brought pursuant to Rule 59(e) of the Federal Rules of Civil Procedure.

12 “Reconsideration is appropriate if the district court (1) is presented with newly
13 discovered evidence, (2) committed clear error or the initial decision was manifestly unjust,
14 or (3) if there is an intervening change in controlling law.” School Dist. No. 1J, Multnomah
15 County v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993) (citation omitted).

16 In support of his Motion, Plaintiff asserts that he has “tried to compile all information
17 needed for the Court but must ask the Court for leniency in l[ay]man terms.” Plaintiff further
18 asserts that he is “in jail with no monies and need[s] to reopen all above cases.”

19 Here, after having considered the foregoing standards, and liberally reviewing the
20 circumstances of Plaintiff’s case, the Court’s previous Order filed May 5, 2010 (Doc. 5), the
21 record in this case, and Plaintiff’s Motion, the Court declines to set aside the Judgment of
22 dismissal entered on June 21, 2010 (Doc. 7) and reopen this case. The Judgment of dismissal
23 was entered in this action for Plaintiff’s failure to comply with the Court’s May 5, 2010
24 Order. Plaintiff does not dispute that he failed to so comply. Accordingly, the Court will

25
26 ¹The two other cases which Plaintiff included in his Motion were Neuendorf v.
27 Unknown Party, CV 10-124-PHX-RCB (DKD), and Neuendorf v. Arizona, CV 10-607-
28 PHX-RCB (DKD).

1 deny Plaintiff's Motion.

2 **III. Lodged Second Amended Complaint**

3 On July 19, 2010, Plaintiff lodged a Second Amended Complaint (Doc. 9) in this
4 closed case. In light of the denial of Plaintiff's Motion (Doc. 8), the Court will direct the
5 Clerk of Court not to file Plaintiff's lodged Second Amended Complaint.

6 **IT IS ORDERED:**

7 (1) Plaintiff's "Motion to the Court" (Doc. 8), which the Court **construes** as being
8 brought pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, is **denied**.

9 (2) The Clerk of Court **must not file** Plaintiff's lodged Second Amended
10 Complaint (Doc. 9).

11 (3) This case **must remain closed**.

12 DATED this 14th day of September, 2010.

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Robert C. Broomfield
Senior United States District Judge